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Statement of
Mr. James E. Webb - bi.
Administrator
National Aeronautics and Space Administration
Before the
Committee on Aeronautical and Space Sciences
United States Senate
May 16, 1961

Mr. Chairman and Members of the Committee:

The complete legislative program recommended by NASA for the current year, except for the annual authorization and appropriation bills, is included in the bill which is before the Committee, S.1857.

The purposes sought through S.1857 are:

1. Repeal of the statutory requirement for a Civilian-Military Liaison Committee.

2. A grant to NASA of statutory authority to indemnify contractors against unusual hazards, to settle patent infringement claims, to waive performance and payment bonds in cost-type construction contracts, and to lease government property for a nonmonetary consideration, similar to the authority presently vested in the military departments.

3. Clarification of existing law.

Elimination of the Civilian-Military Liaison Committee

Section 1(b) of S.1857 would repeal section 204 of the National Aeronautics and Space Act of 1958, thereby

eliminating the Civilian-Military Liaison Committee. The effective functioning of the Aeronautics and Astronautics Coordinating Board removes any need for the Liaison Committee.

Section 204 of the 1958 Act provides for a Committee to be headed by a Chairman appointed by the President and with additional members representing the Department of Defense and the military departments on the one hand and NASA on the other. Under the law, the Chairman is not an official of either NASA or the Department of Defense and has no duty other than to chair the Committee. The only statutory function assigned to the Committee is to provide a channel for advice, consultation, and the exchange of information between NASA and the Department of Defense. No planning, operating, or supervisory responsibilities have been vested in the Committee or its Chairman.

Experience has led both NASA and the Department of Defense to conclude that such an organization is not the most effective means of achieving coordination of their respective programs and activities. After much consideration of the problem by both agencies, we have established, by joint action, an Aeronautics and Astronautics Coordinating Board which is performing a number of valuable

functions, including all of the functions originally entrusted to the Civilian-Military Liaison Committee.

The Aeronautics and Astronautics Coordinating Board has proved more effective than the Liaison Committee because it is co-chaired by the Deputy Administrator of NASA and the Director of Defense Research and Engineering of the Department of Defense and has additional members appointed jointly by the Administrator of NASA and the Department of Defense. By its terms of reference, the Board is responsible for facilitating (1) the planning of activities by NASA and the Department of Defense to avoid undesirable duplication and to achieve efficient utilization of available resources; (2) the coordination of activities in areas of common interest to NASA and the Department of Defense; (3) the identification of problems requiring solution by either NASA or the Department of Defense; and (4) the exchange of information between NASA and the Department of Defense. The Board carries out its functions largely through panels chaired by top management personnel of NASA and the Department of Defense. At present, panels have been established for the following areas: (1) manned space flight; (2) spacecraft; (3) launch

vehicles; (4) space flight ground environment; (5) supporting space research and technology; and (6) aeronautics.

Existing legal authority has been found adequate for the establishment of the Aeronautics and Astronautics Coordinating Board by administrative means, and specific statutory authorization is not desired. The Secretary of Defense and I are in close personal touch on inter-agency issues, and we meet frequently. It is important that we retain maximum flexibility to establish whatever means prove most useful to effect prompt decisions as well as thoroughgoing coordination and liaison at all levels of our organizations.

Additional Legal Authority for NASA

The most important grant of additional legal authority to NASA is found in section 1(e) of S.1857. This subsection would add a new section 308 to the 1958 Act captioned, "Indemnification." It would provide NASA with authority identical to that presently available to the military departments under 10 U.S.C. 2354 to indemnify contractors against risks defined in the contract as unusually hazardous.

NASA requires this indemnification authority for the same reasons that it was given to the military. For example, in the development of advanced methods of propulsion, NASA contractors and subcontractors may be confronted with risks of such a magnitude that they cannot be covered by available insurance or, if coverage is available, at anything like normal insurance rates. Such unusually hazardous risks either must be borne in large part by industry or be covered by insurance at rates that are so high as to result in prohibitive costs being charged to the Government under these contracts, since, without express statutory authority, NASA cannot indemnify its contractors to cover adequately these kinds of risks. This lack of authority poses a serious problem for NASA which can only grow more intense as research and development into propulsion methods, fuels, launch vehicles, and similar work continues into the future. Moreover, in fields where both NASA and the military are placing large contracts, ordinarily with the same industry, this difference in legal authority between NASA and the military departments creates difficulties and misunderstanding.

In three other areas, we are requesting legal authority comparable to that which the Congress has already seen fit to vest in the military departments.

Section 2 of S.1857 would amend the so-called "Miller Act" (40 U.S.C. 270a-270e) to provide NASA with authority, in the case of cost-type construction contracts, to waive performance and payment bonds otherwise required of Government contractors on such work. The proposed amendment would give NASA authority to waive these bonds which is identical to that of the military departments and the Coast Guard under 40 U.S.C. 270e. This requested authority would have been useful, for example, in a cost-type contract that NASA made with a large responsible company calling for the construction of tracking facilities. Whereas a military department would have been able to waive performance and payment bonds under such a contract due to the express statutory authority available to it, NASA could not. In this case, the financial responsibility of the contractor and the form of contract involved would have assured ample protection for the laborers and materialmen who were intended to be protected by the Miller Act. Thus, if the requested authority had been

available to NASA, the Government would have saved a sizeable sum that would appear to have been a needless expense under the circumstances. Repetitions of this situation may be expected.

Section 1(a)(i) of S.1857 would amend section 203(b) of the 1958 Act to provide NASA with greater flexibility in the leasing of government property under its jurisdiction. Unlike the military departments, NASA is presently required by law to make leases of government property "for a money consideration only" (40 U.S.C. 303b). Instances have arisen where it would have been advantageous to the Government for NASA to have leased property for a use which would not interfere with NASA's mission in return for the rendering of certain valuable services by the lessee in connection with the leased property. The proposed use of the property by the lessee, however, would have made it uneconomical to pay a money consideration for its use, although the service to be performed by the lessee would have resulted in a net benefit to the Government. The proposed amendment follows the language of 10 U.S.C. 2667(b)(5) and would give NASA the authority now enjoyed by the military departments under that statutory provision

to permit the lessee to undertake the maintenance, protection, repair, or restoration of the leased property as part or all of the consideration for the lease.

Section 1(a)(ii) of the bill would amend section 203(b) of the 1958 Act by adding a new paragraph granting NASA authority to settle claims against the Government for past infringement of patents arising out of its activities. The military departments now enjoy the authority to settle such claims without imposing upon the claimant the necessity of litigation (10 U.S.C. 2386). NASA has no comparable authority. Section 203(b)(3) of the 1958 Act, authorizing the purchase of patent rights, cannot be utilized by NASA to effect a settlement for past infringement of a patent if no subsequent use of the patent is contemplated. Since its mission traverses a broad spectrum of technology involving innumerable areas in which patents are held by private parties, it is inevitable that claims for patent infringement will be asserted against NASA; and it is most desirable that NASA have adequate authority to settle such claims administratively. The proposed amendment would provide authority

identical to that presently available to the military departments.

Clarifying Amendments

Section 1(d) of S.1857 would amend section 304(b) of the 1958 Act to correct what appears to have been an unintentional omission. The proposed amendment adds the phrase "or designee thereof" after the reference to "the Administrator" in connection with authorizing access to Restricted Data relating to aeronautical and space activities on condition that such access is required in the performance of duty and so certified by the Administrator. The making of these certifications is a function which, in the interest of efficient administration, should be delegable by the Administrator.

Section 3 of the bill would amend 10 U.S.C. 2302 to make it clear that the Deputy Administrator of NASA, like the Under Secretaries and Assistant Secretaries of the military departments, may perform certain nondelegable procurement functions under chapter 137 of Title 10. 10 U.S.C. 2311 requires that certain determinations and decisions involved in the procurement process be performed by the "head of an agency." At present, only the Adminis-

trator of NASA is specifically mentioned in the definition of "head of an agency" in 10 U.S.C. 2302. NASA has construed section 202(b) of the 1958 Act, which provides that the Deputy Administrator "shall perform such duties and exercise such powers as the Administrator may prescribe," as authorizing performance by the Deputy Administrator of any function vested by law in the Administrator, including functions which may not legally be delegated to subordinate personnel. Although this authority appears broad enough to include the performance by the Deputy Administrator of nondelegable functions under chapter 137 of Title 10, it would be desirable to remove all doubt by amending the definition of "head of an agency" in 10 U.S.C. 2302 to include the Deputy Administrator. Such an amendment would eliminate any possible misunderstanding of the Deputy Administrator's authority by contractors dealing with NASA.

Section 1(c) of the bill would amend section 206(a) of the 1958 Act to require that NASA submit an annual report, in place of the present semiannual one, to the President for transmittal to the Congress. Enactment of this amendment would reduce expenditures slightly; but more

importantly, it would provide Congress with a more meaningful report once a year. The present semiannual reports take a considerable amount of time and manpower to prepare and cover too short a period to reflect significant advances.

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